



State of Washington  
Department of Revenue

# Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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Cancelled September 26, 2002

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## LEASEHOLD EXCISE TAX - EXEMPTION FOR PUBLIC EMPLOYEES - CONDITION OF EMPLOYMENT.

Cancelled September 26, 2002

This Excise Tax Bulletin is a clarification of the Department's tax policy and not a change of existing policy.

The Department has considered whether the exemption from leasehold excise tax (RCW 82.29A.130(5)) applies when, as a result of union negotiation-settlement, the public employer may not, as a condition of employment, require an employee to reside in a public residence.

The Department has determined that the exemption applies because the phrase "condition of employment" is not limited to a technical inclusion in an employment contract. The legislature in the enactment of the exemption wanted to provide a benefit to public employees who reside in public residences for the benefit of the public employer. In the determination of whether the condition of employment limitation is met, the duties of the employee actually residing in the residence are examined. If the employee by accepting residence in the provided housing performs and is expected to perform duties which are related to the "business purposes" of the employer, the condition of employment limitation is met. Generally, "condition of employment" for purposes of this exemption parallels the meaning which the phrase has for Federal Income Tax purposes.

### Example:

When an employee of the Department of Fisheries accepts residence at a fish hatchery and is expected to monitor certain equipment during the night and on weekends, the use of the residence is exempt from leasehold excise tax notwithstanding the state may not require the employee to live in the residence.

***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

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- (1) The use is exempt from the leasehold excise tax whether a formal employment contract between the state and the employee specifically requires the employee to reside in the residence or not. The use is exempt because the employee performs the additional caretaker duties which are directly related to the "business purpose" of the Department of Fisheries.
- (2) The use is exempt notwithstanding the employee would continue to be employed by the state if the additional duties were not performed or if state employees of an equal job classification are not required to perform the additional duties.
- (3) If the employee living in the residence merely maintained the residence and did not and was not expected to perform additional duties, the use would not be exempt because no employment for the "business purpose" of the employer is present.